



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL NO. 7000 0520 0025 3713 4775
RETURN RECEIPT REQUESTED

IN REPLY: AIR-5

REFER TO: Docket No. CAA-09-2006-0021

William Garnett, Manager
BR Hamakua, LLC, General Partner
BR Landing, LLC, General Partner
Hamakua Energy Partners, L.P.
6000 Fairview Rd., Suite 600
Charlotte, NC 28210

Dear Mr. Garnett:

Enclosed is a copy of a Complaint and Notice of Opportunity for Hearing ("Complaint") filed pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (1991) (the "Act"). The Complaint alleges that Hamakua Energy Partners, L.P. ("Hamakua") violated the New Source Performance Standards and certain conditions of its Prevention of Significant Deterioration Permit at its liquid fuel cogeneration power plant located at the Hamakua Sugar Mill in Haina, Hawaii (the "Facility"). These violations are set forth more specifically in the Complaint.

You should be aware of the part of the Complaint entitled "Opportunity to Request a Hearing." You are required to respond to this Complaint within thirty (30) days of receipt of the Complaint. If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, your failure shall constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing.

A copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties or Suspension of Permits is enclosed with the Complaint. The Clean Air Act Stationary Source Civil Penalty Policy is located at:
<http://www.epa.gov/compliance/resources/policies/civil/caa/stationary/penpol.pdf>.

If you wish to discuss this Complaint or to continue ongoing settlement discussions, you may contact Charles Aldred, (415) 972-3986, of our Air Enforcement Office, or have your attorney contact Ivan Lieben, of the Office of Regional Counsel, at (415) 972-3914. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Deborah Jordan', with a stylized flourish at the end.

Deborah Jordan
Director Air Division

Enclosures

cc w/enc: Wilfred Nagamine, HDOH

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA

2006 SEP 25 AM 10:02

U.S. DEPT. OF JUSTICE
REGIONAL HEARING CLERK

IN THE MATTER OF:

Hamakua Energy Partners, L.P.
BR Landing, LLCC, and
BR Hamakua, LLCC,

Docket No. CAA-09-2006- 0021

COMPLAINT AND
OPPORTUNITY FOR HEARING

RESPONDENTS.

PRELIMINARY STATEMENT

Complainant, the Director of the Air Division, United States Environmental Protection Agency ("EPA" or "Complainant"), Region IX, issues this Complaint and Notice of Opportunity for Hearing ("Complaint") against Respondents, Hamakua Energy Partners, L.P., and its general partners, BR Landing, LLCC and BR Hamakua, LLCC, (collectively "Hamakua"), pursuant to Section 113(d) of the Clean Air Act, as amended (the "Act" or "CAA"), 42 U.S.C. § 7413(d). The Administrator of EPA ("Administrator") delegated to the Regional Administrator of Region IX the authority to issue complaints such as this one in the state of Hawaii, and the Regional Administrator, in turn, re-delegated that authority to the Complainant. In addition, pursuant to Section 113(d) of the Act, the Administrator of EPA and the United States Attorney General have jointly determined that this matter is appropriate for civil administrative penalty action.

Complainant will show that Respondents violated the CAA at their liquid fuel cogeneration power plant located in Haina, Hawaii (the "Facility") by violating the conditions of their federally enforceable prevention of significant deterioration ("PSD") permit, including emissions limits for nitrogen oxides ("NO_x") and requirements to continuously monitor carbon monoxide ("CO") and opacity and by failing to submit excess emissions reports to EPA on a quarterly basis, as required by the CAA's new source performance standards ("NSPS").

STATUTORY AND REGULATORY AUTHORITY

National Ambient Air Quality Standards

1. Pursuant to authority under Section 109 of the Act, 42 U.S.C. § 7409, the Administrator promulgated the national ambient air quality standards ("NAAQS") for certain criteria pollutants, including particulate matter ("PM₁₀"), CO and nitrogen dioxide ("NO₂"), codified at 40 C.F.R. §§ 50.7, 50.8 and 50.11.

2. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator also promulgated lists of attainment status designations for each air quality control region ("AQCR").

3. The Facility is located in Hawaii County, which at all

times relevant to this complaint has been designated as attainment/unclassifiable for the NAAQS for PM10, CO and NO₂. 40 C.F.R. § 81.312.

Prevention of Significant Deterioration

4. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of primary and secondary NAAQS in the state. Upon approval by EPA, the plan becomes part of the state implementation plan ("SIP").

5. The Hawaii Department of Health ("DOH") has primary jurisdiction for crafting, implementing, and enforcing CAA program requirements, including SIP requirements, in Hawaii County.

6. Section 110(a)(2)(C) of the Act, 42 U.S.C. § 7410(a)(2)(C), requires that each "applicable implementation plan" include a PSD permit program as provided in Part C of Title I of the Act, 42 U.S.C. §§ 7470-7491. Part C, in part, requires the issuance of permits prior to the construction or operation of a new major source.

7. On June 19, 1978, pursuant to Sections 160 through 169 of the Act, 42 U.S.C. §§ 7470-7479, EPA promulgated PSD

regulations at 40 C.F.R. § 52.21. 43 Fed. Reg. 26,402.

8. The provisions of 40 C.F.R. §§ 52.21(b) through (w) were incorporated by reference and made part of the applicable "implementation plan" for the State of Hawaii at 40 C.F.R. § 52.632. 43 Fed. Reg. 26410 (June 19, 1978), as amended at 45 Fed. Reg. 527411 (Aug. 7, 1980), 68 Fed. Reg. 11316, 11322 (Mar. 10, 2003), 68 Fed. Reg. 74483, 74488 (Dec. 24, 2003).

9. The PSD regulations define a "major stationary source" to include, with some exception, any stationary source which emits or has the potential to emit ("PTE") 250 tons per year ("tpy") of any air pollutant subject to regulation under the Act. 40 C.F.R. § 52.21(b)(1)(i).

10. Under the PSD program, NO_x levels are used as a surrogate for NO₂ levels. See, e.g., 40 C.F.R. § 52.21(b)(23)(i) (identifying NO_x and not NO₂ as a pollutant for PSD purposes).

11. An owner or operator must obtain a PSD permit for all pollutants emitted in "significant" amounts before commencing construction of a new major stationary source. 40 C.F.R. §§ 52.21(j) and (r).

12. For pollutants emitted in significant amounts, the PSD permitting process requires, among other things, the application

of best available control technology to control emissions, 40 C.F.R. § 52.21(j); air quality modeling by the source, 40 C.F.R. 52.21(l); and a detailed impact analysis regarding both the NAAQS and allowable increments, 40 C.F.R. 52.21(k).

13. EPA originally delegated the authority to implement and enforce the federal PSD program and its implementing regulations to DOH on October 13, 1983, and amended the delegation on December 12, 1988. Under the delegation, DOH has the primary responsibility of issuing federally enforceable PSD permits pursuant to 40 C.F.R. § 52.21.

14. Failure to comply with the PSD regulations or any condition in a permit issued pursuant to such regulations, including any PSD permit issued by a delegated agency such as DOH, subjects the source to enforcement under Section 113 of the Act. 40 C.F.R. § 52.23.

New Source Performance Standards

15. Pursuant to Section 111 of the Act, 42 U.S.C. § 7411, the Administrator promulgated the NSPS General Provisions, 40 C.F.R. Part 60 Subpart A, on December 23, 1971, 36 Fed. Reg. 24877, as amended, and the NSPS Standards of Performance for Stationary Gas Turbines, 40 C.F.R. Part 60 Subpart GG, on

September 10, 1979, 44 Fed. Reg. 52798, as amended.

16. Pursuant to 40 C.F.R. §§ 60.1 and 60.2, the NSPS requirements apply to "any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication . . . of any [NSPS] standard (or if earlier, the date of publication of any proposed standard) applicable to that facility."

17. 40 C.F.R. § 60.330(a) of the NSPS Standards of Performance for Stationary Gas Turbines states that "[t]he provisions of this subpart are applicable to the following affected facilities: All stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules (10 million Btu) per hour, based on the lower heating value of the fuel fired."

18. 40 C.F.R. § 60.330(b) states that "[a]ny facility under paragraph (a) of this section which commences construction, modification, or reconstruction after October 3, 1977, is subject to the requirements of this part"

19. 40 C.F.R. § 60.334 requires continuous monitoring by affected facilities.

20. 40 C.F.R. § 60.334(j) states that "[f]or each affected

unit required to continuously monitor parameters or emissions, or to periodically determine the fuel sulfur content or fuel nitrogen content under this subpart, the owner or operator shall submit reports of excess emissions and monitor downtime, in accordance with § 60.7(c). Excess emissions shall be reported for all periods of unit operation, including startup, shutdown and malfunction."

21. 40 C.F.R. 60.334(j)(5) states that "[a]ll reports required under 60.7(c) shall be postmarked by the 30th day following the end of each calendar quarter."

22. 40 C.F.R. § 60.13(e) requires that, "[e]xcept for system breakdowns, repairs, calibration checks, and zero and span adjustments required under paragraph (d) of this section, all continuous monitoring systems shall be in continuous operation and shall meet minimum frequency operation requirements"

23. Pursuant to Section 111(e) of the Act, 42 U.S.C. § 7411(e), after the effective date of any NSPS promulgated under Section 111 of the Act, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any NSPS requirement applicable to the source.

GENERAL ALLEGATIONS

24. The Facility is a liquid fuel cogeneration power plant located at the old Hamakua Sugar Mill in Haina, Hawaii, that includes two 23-megawatt combustion turbine generators, Units CT-1 and CT-2.

25. Hamakua, either alone or jointly with other parties, owned and/or operated the Facility during all times relevant to this Complaint.

26. Respondents are "persons" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

27. The Facility, which was constructed in 1999, is a "major stationary source" under the PSD program.

28. After receipt of a PSD permit application, DOH issued the Prevention of Significant Deterioration/Covered Source Permit No. 0243-01-C (the "Permit") to Hamakua pursuant to 40 C.F.R. § 52.21 and Hawaii Administrative Rule ("HAR") Chapter 11-60.1 for construction and operation of the Facility on June 8, 1998, with amendments on September 5 and 28, 2000.

29. The Permit included PSD conditions for certain NAAQS pollutants with "significant" emissions, including PM₁₀, CO and NO_x.

SPECIFIC ALLEGATIONS

COUNT I: FAILURE TO CONTINUOUSLY OPERATE THE FACILITY'S CO CEMS IN VIOLATION OF PERMIT CONDITION D.1.a.7)

30. Complainant realleges and incorporates herein by reference Paragraphs 1 through 29.

31. Condition D.1.a.7) of the Permit requires that Hamakua install, operate, and maintain a continuous emissions monitoring systems (CEMS) for each combustion turbine generator to measure for CO emissions, among other pollutants, and record data from the monitoring system.

32. The Condition also requires that the continuous monitoring system meet EPA performance specifications found at 40 C.F.R. § 60.13; 40 C.F.R. Part 60, Appendix B; and 40 C.F.R. Part 60, Appendix F.

33. Finally, the Condition requires that CEMS shall be on-line and fully operational at all times after the initial performance specification test.

34. From May 2001 through September 2005, Hamakua failed to continuously operate its CO CEMS for Unit CT-1 during hours of operation of the combustion turbine, excluding downtime for system breakdowns, repairs, calibration checks, and zero and span adjustments, including, but not limited to, the following

specific days: 6/16/01, 6/17/01, 6/24/01, 7/11/01, 7/27/01,
8/8/01, 9/8/01, 9/13/01, 9/19/01, 9/20/01, 10/11/01, 10/15/01,
10/17/01, 11/13/01, 11/14/01, 11/15/01, 11/16/01, 1/3/02,
1/5/02, 1/8/02, 2/11/02, 2/14/02, 2/15/02, 2/24/02, 2/26/02,
2/28/02, 3/2/02, 3/5/02, 3/6/02, 3/7/02, 3/8/02, 3/10/02,
3/13/02, 3/14/02, 3/15/02, 3/17/02, 3/18/02, 3/19/02, 3/20/02,
3/25/02, 3/27/02, 3/26/02, 3/28/02, 3/31/02, 3/11/02, 3/30/02,
4/7/02, 4/16/02, 4/24/02, 4/25/02, 5/5/02, 5/7/02, 5/11/02,
5/14/02, 5/23/02, 5/24/02, 5/28/02, 5/30/02, 6/1/02, 6/18/02,
6/20/02, 6/23/02, 6/25/02, 6/26/02, 6/27/02, 6/30/02, 7/3/02,
7/4/02, 7/8/02, 7/10/02, 7/15/02, 7/16/02, 7/17/02, 7/18/02,
7/22/02, 7/26/02, 7/29/02, 8/1/02, 8/5/02, 8/22/02, 8/30/02,
8/31/02, 9/1/02, 9/4/02, 9/9/02, 9/22/02, 11/2/02, 11/25/02,
11/26/02, 2/2/03, 2/3/03, 2/4/03, 2/5/03, 2/6/03, 3/13/03,
8/7/03, 9/12/03, 2/3/04, 2/4/04, 3/18/04, 10/15/04, 11/3/04,
11/6/04, 11/22/04, 11/27/04, 12/11/04, 12/12/04, 12/15/04,
12/21/04, 1/1/05, 1/12/05, 2/3/05, 2/4/05, 2/21/05, 3/7/05,
3/9/05, 3/10/05, 3/16/05, 3/23/05, 4/14/05, 4/15/05, 4/21/05,
4/27/05, 5/19/05, 5/20/05, 5/31/05, 6/27/05, 7/10/05, 7/11/05,
7/12/05, 7/13/05, 7/14/05, 7/15/05, 7/16/05, 7/18/05, 7/24/05,
8/8/05, 8/19/05, 8/25/05, 8/26/05, 9/3/05, 9/4/05, 9/19/05.

35. From May 2001 through September 2005, Hamakua failed to continuously operate its CO CEMS for Unit CT-2 during hours of operation of the combustion turbine, excluding downtime for system breakdowns, repairs, calibration checks, and zero and span adjustments, including, but not limited to, the following specific days: 6/27/01, 7/11/01, 8/31/01, 9/4/01, 9/17/01, 9/19/01, 9/20/01, 9/24/01, 10/2/01, 10/23/01, 10/25/01, 10/26/01, 11/1/01, 11/9/01, 11/14/01, 11/14/01, 11/15/01, 11/16/01, 11/16/01, 11/17/01, 11/24/01, 11/26/01, 11/28/01, 12/1/01, 12/2/01, 12/3/01, 12/4/01, 12/4/01, 12/5/01, 12/6/01, 12/7/01, 12/12/01, 12/13/01, 12/14/01, 12/19/01, 12/19/01, 12/20/01, 12/20/01, 1/30/02, 2/5/02, 2/6/02, 2/8/02, 2/13/02, 2/14/02, 2/20/02, 2/23/02, 3/20/02, 4/7/02, 4/8/02, 4/13/02, 4/28/02, 5/4/02, 5/23/02, 5/24/02, 6/25/02, 6/27/02, 11/25/02, 11/27/02, 11/29/02, 3/12/03, 3/30/03, 9/13/03, 2/4/04, 3/18/04, 3/28/04, 10/15/04, 10/27/04, 11/7/04, 11/9/04, 11/14/04, 12/10/04, 12/15/04, 1/1/05, 1/9/05, 1/10/05, 1/15/05, 1/18/05, 2/13/05, 2/27/05, 3/9/05, 3/21/05, 3/29/05, 4/3/05, 4/7/05, 4/12/05, 5/3/05, 5/12/05, 5/29/05, 6/2/05, 7/1/05, 7/2/05, 7/18/05, 8/7/05, 9/15/05.

36. Hamakua's failure to operate the Facility's CO CEMS

for Units CT-1 and CT-2 at all times, excluding downtime for system breakdowns, repairs, calibration checks, and zero and span adjustments, constitutes a violation of Condition D.1.a.7) of the Permit, a federally enforceable PSD permit.

COUNT II: FAILURE TO CONTINUOUSLY OPERATE THE
 FACILITY'S OPACITY CEMS IN VIOLATION OF PERMIT
 CONDITION D.1.a.8)

37. Complainant realleges and incorporates herein by reference Paragraphs 1 through 36.

38. Condition D.1.a.8) of the Permit requires that Hamakua install, operate, and maintain a transmissometer continuous monitoring system for each combustion turbine generator to measure for opacity levels of stack emissions and record data from the monitoring system.

39. The Condition also requires that the continuous monitoring system meet EPA performance specifications found at 40 C.F.R. Part 60 Section 60.13; 40 C.F.R. Part 60, Appendix B; and 40 C.F.R. Part 60, Appendix F.

40. From May 2001 through September 2005, Hamakua failed to continuously operate its opacity transmissometer for Unit CT-1 during hours of operation of the combustion turbine, excluding downtime for system breakdowns, repairs, calibration checks, and

zero and span adjustments, including, but not limited to, the following specific days: 5/3/01, 5/20/01, 5/29/01, 6/15/01, 6/24/01, 6/25/01, 6/27/01, 6/30/01, 7/3/01, 7/27/01, 8/8/01, 8/9/01, 8/18/01, 8/19/01, 8/27/01, 9/5/01, 9/8/01, 9/10/01, 9/13/01, 9/14/01, 9/15/01, 9/19/01, 9/20/01, 10/2/01, 10/11/01, 10/13/01, 10/15/01, 10/16/01, 10/17/01, 10/18/01, 10/24/01, 10/25/01, 10/26/01, 11/1/01, 11/2/01, 11/3/01, 11/6/01, 11/11/01, 11/12/01, 11/13/01, 11/14/01, 11/15/01, 11/16/01, 11/17/01, 11/18/01, 11/19/01, 12/4/01, 12/5/01, 12/9/01, 12/20/01, 12/27/01, 12/29/01, 1/30/02, 2/21/02, 2/24/02, 2/26/02, 3/6/02, 3/19/02, 4/5/02, 4/7/02, 4/15/02, 4/24/02, 4/27/02, 5/9/02, 5/23/02, 5/24/02, 6/3/02, 6/15/02, 6/19/02, 6/23/02, 6/24/02, 6/25/02, 6/27/02, 10/3/02, 10/24/02, 10/25/02, 11/5/02, 11/15/02, 11/20/02, 11/22/02, 11/23/02, 11/24/02, 11/25/02, 11/27/02, 11/28/02, 11/29/02, 11/30/02, 1/10/03, 1/11/03, 1/19/03, 2/2/03, 2/3/03, 2/4/03, 2/5/03, 2/6/03, 2/7/03, 2/16/03, 2/26/03, 2/28/03, 3/9/03, 3/13/03, 3/28/03, 3/29/03, 7/6/03, 7/15/03, 7/18/03, 8/1/03, 8/7/03, 8/19/03, 9/13/03, 9/23/03, 1/11/04, 1/20/04, 2/4/04, 2/22/04, 2/28/04, 3/7/04, 3/19/04, 3/29/04, 10/1/04, 3/23/05, 3/23/05, 4/22/05, 5/31/05, 7/12/05, 7/13/05, 7/15/05, 8/6/05, 8/7/05, 8/9/05,

8/9/05, 8/18/05, 9/9/05.

41. From May 2001 through September 2005, Hamakua failed to continuously operate its opacity transmissometer for Unit CT-2 during hours of operation of the combustion turbine, excluding downtime for system breakdowns, repairs, calibration checks, and zero and span adjustments, including, but not limited to, the following specific days: 5/3/01, 6/15/01, 7/19/01, 7/22/01, 7/27/01, 8/9/01, 8/15/01, 8/19/01, 8/21/01, 9/2/01, 9/3/01, 9/4/01, 9/5/01, 9/14/01, 9/17/01, 9/19/01, 9/20/01, 9/24/01, 9/26/01, 10/2/01, 10/7/01, 10/14/01, 10/23/01, 10/24/01, 10/29/01, 11/1/01, 11/5/01, 11/7/01, 11/9/01, 11/28/01, 12/19/01, 12/20/01, 1/19/03, 1/20/03, 2/1/03, 2/6/03, 2/14/03, 2/24/03, 2/26/03, 3/9/03, 3/12/03, 7/3/03, 7/6/03, 9/13/03, 9/23/03, 1/14/04, 1/15/04, 1/30/04, 2/4/04, 2/25/04, 2/28/04, 3/7/04, 3/14/04, 3/22/04, 3/24/04, 3/31/04, 11/15/04, 11/16/04, 11/30/04, 12/1/04, 12/6/04, 12/7/04, 2/3/05, 3/21/05, 3/23/05, 3/27/05, 3/28/05, 3/29/05, 3/30/05, 3/31/05, 4/2/05, 4/3/05, 4/4/05, 4/22/05, 4/27/05, 5/2/05, 6/2/05, 7/26/05.

42. Hamakua's failure to operate the Facility's opacity transmissometer for Units CT-1 and CT-2 at all times, excluding downtime for system breakdowns, repairs, calibration checks, and

zero and span adjustments, constitutes a violation of Condition D.1.a.8) of the Permit, a federally enforceable PSD permit.

COUNTS III-IV: FAILURE TO COMPLY WITH NO_x EMISSIONS STANDARDS IN VIOLATION OF PERMIT CONDITION C.1.e)

43. Complainant realleges and incorporates herein by reference Paragraphs 1 through 42.

44. Condition C.1.e) of the Permit requires that, except for the combustion turbine generators' start-up, shut-down, or maintenance, the Facility shall not discharge from any combustion turbine NO_x (as NO₂) emissions in excess of the following:

- a. 11.7 lbs/hr for Combined Cycle mode;
- b. 33.4 lbs/hr for Simple Cycle mode;
- c. 15 ppmvd @ 15 percent O₂ for Combined Cycle mode;
or
- d. 42 ppmvd @ 15 percent O₂ for Combined Cycle mode.

45. From May 2001 through September 2003, Hamakua failed to meet its allowable maximum emissions limit of 15 ppmvd @ 15% O₂, excluding periods of start-up, shut-down, or maintenance, for Unit CT-1, including, but not limited to, the following specific days: 5/8/01, 5/10/01, 5/15/01, 5/23/01, 6/5/01, 6/7/01, 6/10/01, 6/23/01, 6/25/01, 6/26/01, 7/10/01, 7/24/01, 8/3/01, 8/11/01, 8/31/01, 9/21/01, 9/23/01, 9/29/01, 10/7/01, 10/9/01,

10/20/01, 11/4/01, 11/10/01, 11/11/01, 11/12/01, 11/15/01,
11/17/01, 11/23/01, 11/30/01, 12/3/01, 12/6/01, 12/12/01,
12/21/01, 12/26/01, 12/28/01, 1/7/02, 1/13/02, 1/22/02, 2/3/02,
2/23/02, 2/27/02, 3/2/02, 3/7/02, 3/15/02, 3/29/02, 3/31/02,
4/4/02, 4/10/02, 4/20/02, 4/23/02, 5/16/02, 5/24/02, 6/11/02,
7/1/02, 7/27/02, 8/29/02, 8/31/02, 9/4/02, 9/26/02, 9/28/02,
7/1/02, 7/27/02, 8/29/02, 8/31/02, 9/4/02, 9/26/02, 9/28/02,
10/8/02, 11/8/02, 11/9/02, 11/12/02, 11/22/02, 12/8/02, 12/9/02,
12/13/02, 1/19/03, 2/2/03, 2/12/03, 2/27/03, 3/16/03, 4/5/03,
4/6/03, 4/12/03, 5/16/03, 6/20/03, 7/25/03, 9/6/03, 9/8/03,
9/17/03, 9/28/03.

46. From May 2001 through March 2003, Hamakua failed to meet its allowable maximum emissions limit of 15 ppmvd @ 15% O₂, excluding periods of start-up, shut-down, or maintenance, for Unit CT-2, including, but not limited to, the following specific days: 4/4/02, 3/5/03.

47. From May 2001 through June 2003, Hamakua failed to meet its allowable maximum emissions limit of 11.7 lbs/hr, excluding periods of start-up, shut-down, or maintenance, for Unit CT-1, including, but not limited to, the following specific days: 6/21/01, 6/25/01, 7/10/01, 8/3/01, 8/31/01, 9/21/01,

10/15/01, 11/12/01, 12/6/01, 1/26/02, 2/21/02, 2/22/02, 2/23/02,
3/7/02, 3/31/02, 4/2/02, 4/3/02, 4/6/02, 4/7/02, 4/20/02,
4/23/02, 4/27/02, 5/16/02, 5/24/02, 5/24/02, 6/23/02, 7/11/02,
7/17/02, 7/27/02, 8/13/02, 8/22/02, 8/27/02, 8/29/02, 8/30/02,
8/31/02, 9/1/02, 9/2/02, 9/4/02, 9/5/02, 9/11/02, 9/18/02,
9/19/02, 9/21/02, 9/26/02, 9/28/02, 7/11/02, 7/17/02, 7/27/02,
8/13/02, 8/22/02, 8/27/02, 8/29/02, 8/30/02, 8/31/02, 9/1/02,
9/2/02, 9/4/02, 9/5/02, 9/11/02, 9/18/02, 9/19/02, 9/21/02,
9/26/02, 9/28/02, 10/1/02, 10/2/02, 10/5/02, 10/8/02, 10/12/02,
10/17/02, 10/21/02, 10/30/02, 11/8/02, 11/10/02, 11/20/02,
11/21/02, 11/22/02, 12/4/02, 12/8/02, 12/9/02, 12/30/02,
1/23/03, 2/2/03, 2/3/03, 2/5/03, 2/9/03, 2/12/03, 2/13/03,
3/2/03, 3/7/03, 3/11/03, 3/12/03, 3/14/03, 6/20/03.

48. During March 2005, Hamakua failed to meet its allowable maximum emissions limit of 11.7 lbs/hr, excluding periods of start-up, shut-down, or maintenance, for Unit CT-2, including, but not limited to, the following specific day:
3/4/05.

49. Hamakua's failure to operate in compliance with the 15 ppm and 11.7 lbs/hr NO_x limits set forth in Condition C.1.e) of the Permit constitutes two violations of Condition C.1.e) of the

Permit, a federally enforceable PSD permit.

COUNT V: FAILURE TO SUBMIT QUARTELY EXCESS EMISSION
 REPORTS IN VIOLATION OF 40 C.F.R. §§ 60.7(c) and
 60.334(j)

50. Complainant realleges and incorporates herein by reference Paragraphs 1 through 49.

51. The Facility is currently and has been an "affected facility" subject to 40 C.F.R. Part 60 Subpart A and Subpart GG since its initial construction and operation because it contains a stationary gas turbine with a heat input peak load equal or greater to 10.7 gigajoules (10 million Btu) per hour, based on the lower heating value of the fuel fired.

52. As the owner or operator of an "affected facility" under Subpart GG, Hamakua is required to continuously monitor certain air emissions and/or parameters and submit quarterly excess emission reports to EPA pursuant to 40 C.F.R. §§ 60.7(c) and 60.334.

53. Hamakua has failed to submit any NSPS quarterly excess emission reports to EPA, Region IX since at least June 30, 2001.

54. Hamakua's failure to submit NSPS quarterly reports to EPA, Region IX constitutes a violation of 40 C.F.R. §§ 60.7(c) and 60.334(j).

GENERAL PLEADING FOR A CIVIL PENALTY

Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes a civil administrative penalty of up to Twenty-Five Thousand Dollars (\$25,000) per day for each violation of the Act, provided that the total amount of penalty assessed does not exceed Two Hundred Thousand Dollars (\$200,000). These maximum amounts have been adjusted to \$27,500 per day not to exceed a total penalty of \$220,000, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, for violations occurring after January 30, 1997, but before March 15, 2004. These maximum amounts have again been adjusted to \$32,500 per day not to exceed a total penalty of \$270,000, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, for violations occurring after March 15, 2004.

For purposes of determining the amount of the civil penalty to be assessed, Section 113(e) of the Act, 42 U.S.C. § 7413(e), requires the Administrator to consider the size of the business, the economic impact of the penalty on the business, the

violator's compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

Accordingly, Complainant requests that after consideration of these statutory assessment factors, the Administrator assess against Respondents a civil administrative penalty of up to \$27,500 per day for each violation of the Act set forth above that occurred on or before March 15, 2004, and up to \$32,500 per day for each violation of the Act set forth above that occurred after March 15, 2004.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 113(d) of the Act, 42 U.S.C. § 7213(d), you have the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 et seq., and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension

of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

You must file a written Answer within thirty (30) days of receiving this Complaint to avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and to avoid having the above penalty assessed without further proceedings. If you choose to file an Answer, you are required by the Consolidated Rules of Practice to clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint to which you have any knowledge. If you have no knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny any of the allegations in this Complaint will constitute an admission of the undenied allegation.

The Answer shall also state the circumstances and arguments, if any, which are alleged to constitute the grounds of defense, and shall specifically request an administrative hearing, if desired. If you deny any material fact or raise any affirmative defense, you will be considered to have requested a hearing.

The Answer must be filed with:

Regional Hearing Clerk
USEPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

In addition, please send a copy of the Answer and all other documents that you file in this action to:

Ivan Lieben
Assistant Regional Counsel
Office of Regional Counsel (ORC-2)
USEPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Mr. Lieben is the attorney assigned to represent EPA in this matter. His telephone number is (415)972-3914.

You are further informed that the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

INFORMAL SETTLEMENT CONFERENCE

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through informal conferences. Therefore, whether or not you request a hearing, you may confer informally with EPA through Ivan Lieben,

the EPA attorney assigned to this case, regarding the facts of this case, the amount of the proposed penalty, and the possibility of settlement. An informal settlement conference does not, however, affect your obligation to file an Answer to this Complaint.

ALTERNATIVE DISPUTE RESOLUTION

The parties also may engage in any process within the scope of the Alternative Dispute Resolution Act, 5 U.S.C. § 581 et seq., which may facilitate voluntary settlement efforts. Dispute resolution using alternative means of dispute resolution does not divest the Presiding Officer of jurisdiction nor does it automatically stay the proceeding.

CONSENT AGREEMENT AND FINAL ORDER


EPA has the authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with you in an informal conference or through alternative dispute resolution. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by both parties would be binding as to all terms and conditions specified therein when the Regional Judicial Officer signs the Final Order.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
CAA-9-2006-

COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

BY:

DATE: 9.22.06



Deborah Jordan
Director, Air Division
U.S. EPA, Region 9

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Consent Agreement and Final Order was hand delivered to:

The Regional Hearing Clerk
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

and that a true and correct copy of the Complaint and Notice of Opportunity for Hearing was placed in the United States Mail, certified mail number 7000 0520 0025 3713 4775, return receipt requested, addressed to the following:

William Garnett, Manager
BR Hamakua, LLC, General Partner
BR Landing, LLC, General Partner
Hamakua Energy Partners, L.P.
6000 Fairview Rd., Suite 600
Charlotte, NC 28210

Dated: _____

9/25/06

By: _____



Charles Aldred
Air Enforcement Office
EPA, Region 9